

This document prepared by:  
Kathleen T. Henn  
On Behalf of the Village of Orland Park  
Klein, Thorpe and Jenkins, Ltd.  
20 North Wacker Drive, Suite 1660  
Chicago, Illinois 60606

For Recorder's Use Only

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**DEVELOPMENT AGREEMENT  
(ORLAND PARK 159<sup>TH</sup> STREET PLAZA – 9400 W. 159<sup>TH</sup> STREET)**

**INTRODUCTION**

1. This Agreement entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2012, by and between the VILLAGE OF ORLAND PARK, an Illinois municipal corporation (hereinafter referred to as the "Village"), and AETNA DEVELOPMENT CORPORATION, an Illinois corporation, Developer of the Subject Property (hereinafter referred to as "Developer"), and Armstrong Property Group, L.L.C., an Illinois limited liability company, Owner of the Subject Property legally described below (hereinafter referred to as "Owner"). Developer and Owner are collectively referred to as "Owners."

2. The Property subject to this Agreement, legal title to which is vested in Owner (excepting such portion as is dedicated to the public), is legally described as follows:

Lot 1 in Tom's Subdivision, being a subdivision in the southwest quarter of section 15, Township 36 north, range 12 east of the third principal meridian, according to the plat thereof recorded December 10, 1986 as document 86589817, except that part of Lot 1 taken for widening of 94<sup>th</sup> Avenue and 159<sup>th</sup> Street conveyed to the Department of Transportation for the State of Illinois, recorded December 1, 2006 as Document Number 0633544061, in Cook County, Illinois.

P.I.N. No.: 27-15-302-015-0000

The said property is hereinafter referred to as the "Subject Property."

3. The Subject Property is generally located at the northwest corner of 159<sup>th</sup> Street and 94<sup>th</sup> Avenue, at 9400 W. 159<sup>th</sup> Street, and consists of approximately 1.61 acres. The property used to have a gas station, but the building has been razed and the site vacant for several years. It is zoned BIZ General Business District under the Village of Orland Park Land Development Code (hereinafter referred to as the "Code").

4. Developer plans to construct a two building planned development commercial retail center, with a special use for the two building planned development and a modification to reduce the parking spaces required from 85 to no fewer than 73 in the BIZ General Business District.

5. The Village of Orland Park is a Home Rule Unit pursuant to the provisions of the Illinois Constitution, Article VII, Section 6, and the terms, conditions and acts of the Village under this Agreement are entered into and performed pursuant to the Home Rule powers of the Village and the statutes in such cases made and provided.

RECITALS:

1. The parties hereto desire that the Subject Property be developed as described above, subject to Village codes and ordinances and the terms and conditions as hereinafter set forth in this Agreement.

2. The Developer has petitioned the Village for a special use and plan approval in the BIZ General Business District with a modification to reduce the required parking spaces from 85 to no fewer than 73 spaces.

3. The parties hereto have fully complied with all relevant statutes of the State of Illinois and ordinances of the Village including the filing of petitions by Developer to enable development as herein provided. The Village has caused the issuance of proper notice and the conduct of all hearings by all necessary governmental entities to effectuate such actions as herein provided, including all hearings as are necessary to effectuate the plan of development herein set forth.

4. All reports by all relevant governmental entities have been submitted enabling appropriate action by the Village Board of Trustees to achieve the following:

(a) Adoption and execution of this Agreement by ordinance;

(b) Adoption of such ordinances as are necessary to effectuate the terms and provisions of this Agreement including the granting of a special use and a parking modification and development of the Subject Property pursuant to the terms and conditions of this Agreement;

(c) The adoption of such other ordinances, resolutions and actions as may be necessary to fulfill and implement this Agreement pursuant to the terms and conditions herein contained.

5. The parties hereto have determined that it is in the best interests of the Village, the Developer and the Owner and in furtherance of the public health, safety, comfort, morals and welfare of the community to execute and implement this Agreement and that implementation of this Agreement and development of the Subject Property pursuant to its terms and conditions will constitute an improvement of the tax base of the Village, be in implementation of the comprehensive plan of the Village and will constitute a preservation of environmental values.

6. Developer and Owner covenant and agree that they will execute all reasonably necessary directions and issue all reasonably necessary instructions and take all other action necessary to perform their obligations hereunder.

SECTION ONE: Special Use, Modification, Plan Approval and Design Standards.

A. The Village, upon the necessary hearings before the relevant governmental bodies having taken place pursuant to statute and ordinances in such cases made and provided and pursuant to requisite notice having been given, will by proper ordinance cause the above-described Subject Property to be granted a special use under the Code to permit a two building planned development and to be granted a modification to reduce the required parking spaces from 85 spaces to no fewer than 73 parking spaces in the BIZ General Business District, also as shown on the final plan.

B. The Subject Property shall be developed substantially in accordance with the Site Plan titled "Proposed Retail Preliminary Site Plan," prepared by KMA & Associates, project number 0647, dated January 27, 2012 subject to the following conditions:

1. A cross-access agreement is provided granting the current or future property owner(s) to the west the right to construct, on both properties, a cross access connection in the area labeled "future cross access area" and a cross access easement along the northern drive aisle.
2. New retaining walls must not exceed three feet (3') in height (Note that existing retaining walls in excess of three feet (3') may remain).
3. A Final Landscape Plan meeting all Village Codes, is submitted for separate Village review and approval within 60 days of final engineering approval that includes mitigation for unpermitted tree removal.
4. All Final Engineering and Building Code related items are met.

C. The Subject Property shall be developed substantially in accordance with the Elevations titled "Proposed Retail NWC 159<sup>th</sup> & 94<sup>th</sup> Avenue," prepared by KMA & Associates, project number 0647, page 2 dated November 18, 2011, page 3 dated November 18, 2011, revised February 13, 2012 and page 4 dated November 81, 2011, revised February 7, 2012, subject to the following conditions:

1. All mechanical equipment must be screened at grade level with landscaping or hidden behind the roofline; and
2. All signage must be considered through a separate permitting process.

SECTION TWO: Storm Water Retention/Detention and Storm Sewers.

Storm Water run off emanating from the Subject Property shall be retained or detained in accordance with an existing detention pond to the north of the Subject Property. Due to the increase in lot coverage, additional storm water capacity is required and will be accommodated on-site including underground detention as may be required and approved by the Village. Such system shall include all storm water management facilities, including both on-site and off-site storm sewers, if needed, in accordance with final engineering plans previously approved by the Village. The design criteria, construction and maintenance of the storm sewers shall be in accordance with all standards of the Village in force on the date of final plan, and also all standards of the Metropolitan Water Reclamation District of Greater Chicago in effect at the time of final plan approval, and shall be completed by the Developer at its expense. All on-site storm water detention/retention facilities shall be maintained by the Owner.

SECTION THREE: Water Supply.

Developer shall be required to construct and install at its expense all necessary on-site water mains to service the Subject Property. All such water mains shall be sized, constructed and installed in accordance with the Code and final engineering plans approved by the Village. The Developer shall pay to the Village the required water connection charge(s) based upon the size of the connection(s) in accordance with Village ordinances.

SECTION FOUR: Sanitary Sewers.

Developer shall be required to construct and install at its expense all necessary sanitary sewers to service the Subject Property in accordance with the Code and final engineering plans approved by the Village. Said sewers shall be sized as required by the Village. All required fees are due before a building permit will be issued.

SECTION FIVE: Sidewalks.

All sidewalks shown on the final plan (EXHIBIT A) that do not already exist shall be constructed by Developer to the applicable Village standards.

SECTION SIX: Easements.

Developer and Owner agree at the time of approval of this Development Agreement to grant to the Village, and/or obtain grants to the Village, of all necessary easements for the extension of sewer, water, street, or other utilities, including cable television, or for other improvements which may serve not only the Subject Property, but other properties in the general area, such as cross-access easements.

All such easements to be granted shall name the Village and/or other appropriate entities designated by the Village as grantee hereunder. It shall be the responsibility of Developer and Owner to obtain all easements, both on-site and off-site, necessary to serve the Subject Property.

SECTION SEVEN: Developmental Codes and Ordinances and General Matters.

The development of the Subject Property shall be in accordance with the existing building, zoning, subdivision, storm water retention and other developmental codes and ordinances of the Village as they exist on the date hereof, or, with respect to codes and ordinances subsequently adopted by the Village for the protection of life, health and safety and applicable to similar commercial buildings Village-wide, as are in existence during development of the Subject Property. Planning and engineering designs and standards, and road construction and dedication of public improvements, shall be in accordance with the then existing ordinances of the Village, or in accordance with the statutes and regulations of other governmental agencies having jurisdiction thereof if such standards are more stringent than those of the Village of Orland Park at such time.

No occupancy permit shall be issued for any building prior to the completion and acceptance by the Village of any required public improvements. Any required public improvements shall be completed within one (1) year from the date hereof and the Developer shall deliver to the Village an irrevocable letter of credit (the form of security Developer has elected to provide) in a form satisfactory to and from a bank or financial institution and in an amount as provided for in the Code. Said Letter of Credit is to include all costs related to required lighting, landscaping, roadway, sidewalk, sewer and water lines and storm water management facilities. The Village may, in its discretion, permit the amount of said letter of credit (or such other form of security acceptable to the Village) to be reduced, from time to time, as major public improvements are completed. The Village may also require an increase, from time to time, if the estimated cost of completing the public improvements increases more than 3% per annum.

SECTION EIGHT: Utilities.

All electricity, telephone, cable television and gas lines shall be installed underground, the location of which underground utilities shall be at Developer's option.

SECTION NINE: Impact Requirements.

Developer and Owner agree that any and all contributions, dedications, donations and easements provided for in this Agreement substantially advance legitimate governmental interests of the Village, including, but not limited to, providing its residents, with access to and use of public utilities, streets, fire protection, and emergency services. Developer and Owner further agree that the contributions, dedications, donations and easements required by this Agreement are uniquely attributable to, reasonably related to, and made necessary by the development of the Subject Property.

SECTION TEN: Binding Effect and Term and Covenants Running with the Land.

This Agreement shall be binding upon and inure to the benefit of the parties hereto, successor owners of record of the Subject Property, assignees, lessees and upon any successor

municipal authorities of said Village and successor municipalities, for a period of ten (10) years from the date of execution hereof and any extended time that may be agreed to by amendment.

The terms and conditions of this Agreement relative to the payment of monies to the various contributions to the Village, construction and/or dedication of public improvements, granting of easements to the Village, dedication of rights-of-way to the Village and the developmental standards established herein shall constitute covenants which shall run with the land.

SECTION ELEVEN: Notices.

Unless otherwise notified in writing, all notices, requests and demands shall be in writing and shall be personally delivered to or mailed by United States Certified mail, postage prepaid and return receipt requested, as follows:

For the Village:

1. Daniel J. McLaughlin  
Village President  
14700 South Ravinia Avenue  
Orland Park, Illinois 60462
2. David P. Maher  
Village Clerk  
14700 South Ravinia Avenue  
Orland Park, Illinois 60462
3. E. Kenneth Friker  
Village Attorney  
Klein, Thorpe & Jenkins, Ltd.  
15010 S. Ravinia Avenue  
Orland Park, Illinois 60462

For the Developer and Owner:

Aetna Development Corporation and  
Armstrong Property Group, L.L.C.  
George Hanus  
200 West Madison Street, Suite 4200  
Chicago, IL 60606

or such other addresses as any party hereto may designate in writing to the other parties pursuant to the provisions of this Section.

SECTION TWELVE: Signs.

The location of any sign upon the Subject Property shall be in accordance with an approved Signage Plan and the Village's Sign Ordinance, as set forth in the Code, and shall have reasonable setbacks from streets and highways as the interest of safety may require.

SECTION THIRTEEN: Reimbursement of Village for Legal and Other Fees and Expenses.

A. To Effective Date of Agreement.

The Developer, concurrently with the issuance of the building permit, shall reimburse the Village for the following expenses incurred in the preparation and review of this Agreement, and any ordinances, letters of credit, plats, easements or other documents relating to the Subject Property:

- (1) the costs incurred by the Village for engineering services;
- (2) all reasonable attorneys' fees incurred by the Village; and
- (3) miscellaneous Village expenses, such as legal publication costs, recording fees and copying expense.

B. From and After Effective Date of Agreement.

Except as hereinafter provided, upon demand by Village made by and through its President, Developer from time to time shall promptly reimburse Village for all enumerated reasonable expenses and costs incurred by Village in the administration of the Agreement, including and limited to engineering fees, attorneys' fees and out of pocket expenses involving various and sundry matters such as, but not limited to, preparation and publication, if any, of all notices, resolutions, ordinances and other documents required hereunder.

Such costs and expenses incurred by Village in the administration of the Agreement shall be evidenced to the Developer upon its request, by a sworn statement of the Village; and such costs and expenses may be further confirmed by the Developer at its option from additional documents relevant to determining such costs and expenses as designated from time to time by the Developer.

Notwithstanding the immediately preceding paragraph, Developer shall in no event be required to reimburse Village or pay for any expenses or costs of Village as aforesaid more than once, whether such are reimbursed or paid through special assessment proceedings, through fees established by Village ordinances or otherwise.

In the event that any third party or parties institute any legal proceedings against any party hereto, which relate to the terms of this Agreement, then, in that event, the Developer on

notice from Village shall assume, fully and vigorously, the entire defense of such lawsuit and all expenses of whatever nature relating thereto; provided, however:

- (1) Developer shall not make any settlement or compromise of the lawsuit, or fail to pursue any available avenue of appeal of any adverse judgment, without the approval of the Village.
- (2) If the Village, in its sole discretion, determines there is, or may probably be, a conflict of interest between Village and Developer on an issue of importance to the Village having a potentially substantial adverse effect on the Village, then the Village shall have the option of being represented by its own legal counsel. In the event the Village exercises such option, then Developer shall reimburse the Village from time to time on written demand from the President of Village and notice of the amount due for any expenses, including but not limited to court costs, reasonable attorneys' fees and witnesses' fees, and other reasonable expenses of litigation, incurred by the Village in connection therewith.

In the event a party hereto institutes legal proceedings against any other party for violation of this Agreement and secures a judgment in its favor, the court having jurisdiction thereof shall determine and include in its judgment against the unsuccessful party all expenses of such legal proceedings incurred by the successful party, including but not limited to the court costs and reasonable attorneys' fees, witnesses' fees, etc., incurred in connection therewith. Either party may, in its sole discretion, appeal any such judgment rendered in favor of the other party.

SECTION FOURTEEN: Warranties and Representations.

The Developer and Owner represent and warrant to the Village as follows:

1. Owner is the legal title holder and the owner of record of the Subject Property as indicated on the first page of this Agreement.
2. Developer proposes to develop the Subject Property in the manner contemplated in this Agreement.
3. Other than Developer and Owner, no other entity or person has any interest as of the date hereof in the Subject Property or its development as herein proposed.
4. Owner has provided the legal description of the Subject Property set forth in this Agreement and the attached Exhibits and said legal description is accurate and correct.
5. With respect to any real estate herein which will become property of the Village, Owner warrants and represents, to the best of its knowledge, that during the period of its ownership or control over said Subject Property it has no knowledge of, nor reason to suspect, that there has been any underground storage (or other) tank or any presence, disposal, release or threatened release of hazardous substances or hazardous wastes on, from or under the property,



by or through Owner or Developer. Owner similarly represents and warrants that any development on the Subject Property will be subject to the conditions contained in the special warranty deed recorded on October 18, 2010 as Document No. 1029139069, any No Further Remediation Letter issued by the Illinois Environmental Protection Agency or any other applicable restrictions.

Owner similarly further represents and warrants that to the best of its knowledge, the Subject Property (including underlying soil and ground water conditions) is not in violation of any state, local, federal, municipal or other law, statute, regulation, code, ordinance, decree or other relating to hygienic or environmental conditions, and during ownership or control of the property by Owner, no party has stored or disposed of any flammable explosives, radioactive materials, hazardous waste, toxic substances or other related materials on, under or about the property. Owner shall and does hereby agree to indemnify, protect, defend, and hold the Village harmless from and against any claims, losses, demands, costs, proceedings, suits, liabilities, damages and causes of action, including consequential damages and attorneys' fees of counsel selected by the Village and other costs of defense incurred, arising against or suffered by the Village of its assigns as a consequence, directly or indirectly, of any misrepresentation by Owner of the foregoing representations and warranties, whether discovered before or after the conveyance of any of the Subject Property to the Village.

SECTION FIFTEEN: Continuity of Obligations.

Notwithstanding any provision of this Agreement to the contrary, including but not limited to the sale or conveyance of all or any part of the Subject Property by Owner, Owner shall at all times during the term of this Agreement remain liable to Village for the faithful performance of all obligations imposed upon it by this Agreement until such obligations have been fully performed or until Village, at its sole option, has otherwise released them from any or all of such obligations, and Developer shall at all times during the term of this Agreement remain liable to the Village for the faithful performance of all obligations imposed upon Developer by this Agreement until such obligations have been fully performed or the Village, at its sole option, has otherwise released Developer from any or all of such obligations.

SECTION SIXTEEN: No Waiver or Relinquishment of Right to Enforce Agreement.

Failure of any party to this Agreement to insist upon the strict and prompt performance of the terms, covenants, agreements, and conditions herein contained, or either of them, upon any other party imposed, shall not constitute or be construed as a waiver or relinquishment of any party's right thereafter to enforce any such term, covenant, agreement or condition, but the same shall continue in full force and effect.

SECTION SEVENTEEN: Village Approval or Direction.

Where Village approval or direction is required by this Agreement, such approval or direction means the approval or direction of the Corporate Authorities of the Village unless otherwise expressly provided or required by law, and any such approval may be required to be

given only after and if all requirements for granting such approval have been met unless such requirements are inconsistent with this Agreement.

SECTION EIGHTEEN: Singular and Plural.

Wherever appropriate in this Agreement, the singular shall include the plural, and the plural shall include the singular.

SECTION NINETEEN: Section Headings and Subheadings.

All section headings or other headings in this Agreement are for general aid of the reader and shall not limit the plain meaning or application of any of the provisions hereunder whether covered or relevant to such heading or not.

SECTION TWENTY: Recording.

A copy of this Agreement and any amendment thereto shall be recorded by the Village at the expense of the Developer.

SECTION TWENTY-ONE: Authorization to Execute.

The officers of Developer and Owner executing this Agreement warrant that they have been lawfully authorized to execute this Agreement on their behalf. The President and Clerk of the Village hereby warrant that they have been lawfully authorized by the Village Board of the Village to execute this Agreement. Developer, Owner and Village shall, upon request, deliver to each other, at the respective time such entities cause their authorized agents to affix their signatures hereto, copies of all bylaws, resolutions, ordinances, partnership agreements, letters of direction or other documents required to legally evidence the authority to so execute this Agreement on behalf of the respective entities.

SECTION TWENTY-TWO: Amendment.

This Agreement sets forth all the promises, inducements, agreements, conditions and understandings between the parties hereto relative to the subject matter thereof, and there are no promises, agreements, conditions or understandings, either oral or written, express or implied, between them, other than are herein set forth. Except as herein otherwise provided, no subsequent alteration, amendment, change or addition to this Agreement shall be binding upon the parties hereto unless authorized in accordance with law and reduced in writing and signed by them.

SECTION TWENTY-THREE: Counterparts.

This Agreement may be executed in two or more counterparts, each of which taken together, shall constitute one and the same instrument.

SECTION TWENTY-FOUR: Curing Default.

The parties to this Agreement reserve a right to cure any default hereunder within thirty (30) days from written notice of such default, or such additional time as is reasonably required to cure the default so long as the cure of default is commenced within said thirty (30) days, and efforts to effect such cure of default are diligently prosecuted to completion.

SECTION TWENTY-FIVE: Conflict Between the Text and Exhibits.

In the event of a conflict in the provisions of the text of this Agreement and the Exhibits attached hereto, the text of the Agreement shall control and govern.

SECTION TWENTY-SIX: Severability.

If any provision of this Agreement is held invalid by a court of competent jurisdiction or in the event such a court shall determine that the Village does not have the power to perform any such provision, such provision shall be deemed to be excised herefrom and the invalidity thereof shall not affect any of the other provisions contained herein, and such judgment or decree shall relieve Village from performance under such invalid provision of this Agreement.

SECTION TWENTY-SEVEN: Definition of Village.

When the term Village is used herein it shall be construed as referring to the Corporate Authorities of the Village unless the context clearly indicates otherwise.

SECTION TWENTY-EIGHT: Execution of Agreement.

This Agreement shall be signed last by the Village and the President of the Village shall affix the date on which he signs this Agreement on page 1 hereof which date shall be the effective date of this Agreement.

VILLAGE OF ORLAND PARK, an  
Illinois Municipal Corporation

By: \_\_\_\_\_  
Village President

ATTEST:

By: \_\_\_\_\_  
Village Clerk

DEVELOPER  
AETNA DEVELOPMENT CORPORATION,  
An Illinois corporation

By: \_\_\_\_\_  
Its \_\_\_\_\_

ATTEST:

By: \_\_\_\_\_  
Its \_\_\_\_\_

OWNER  
ARMSTRONG PROPERTY GROUP, L.L.C.,  
An Illinois limited liability company

By: \_\_\_\_\_  
Its \_\_\_\_\_

ATTEST:

By: \_\_\_\_\_  
Its \_\_\_\_\_



STATE OF ILLINOIS    )  
                                  ) SS.  
COUNTY OF COOK    )

I, the undersigned, a Notary Public in and for the County and State aforesaid, DO HEREBY CERTIFY that the above-named \_\_\_\_\_ and \_\_\_\_\_, personally known to me to be \_\_\_\_\_ and \_\_\_\_\_ of AETNA DEVELOPMENT CORPORATION and the same persons whose names are subscribed to the foregoing instrument as said \_\_\_\_\_ and \_\_\_\_\_ of AETNA DEVELOPMENT CORPORATION, appeared before me this day in person and acknowledged that they signed and delivered the said instrument as their own free and voluntary act and as the free and voluntary act of said corporation for the uses and purposes therein set forth.

GIVEN under my hand and official seal, this \_\_\_\_\_ day of \_\_\_\_\_, 2012.

My commission expires \_\_\_\_\_

\_\_\_\_\_  
Notary Public

STATE OF ILLINOIS    )  
                                  ) SS.  
COUNTY OF COOK    )

I, the undersigned, a Notary Public in and for the County and State aforesaid, DO HEREBY CERTIFY that \_\_\_\_\_, personally known to me to be the Managing Member of ARMSTRONG PROPERTY GROUP, LLC, an Illinois limited liability company, personally known to me to be the same person whose name is subscribed to the foregoing instrument as such Managing Member, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act and as the free and voluntary act of said Limited Liability Company for the uses and purposes therein set forth.

GIVEN under my hand official seal, this \_\_\_\_\_ day of \_\_\_\_\_, 2012.

\_\_\_\_\_  
Notary Public

My commission expires \_\_\_\_\_